

# California High-Speed Train Project



Agreement No.: \_\_\_\_\_

## **SUPPLEMENTAL GENERAL PROVISIONS**

**RFP RELEASED - 1/24/2014**

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## Supplemental General Provisions

### **ARTICLE 1 REQUIREMENTS UNDER STATE LAW:**

Contractor shall comply with and insert the following provisions in all Subcontracts entered into pursuant to the Contract:

#### **1.1 Child and Family Support Obligations.**

Contractor acknowledges the policy of the State set forth in Public Contract Code 7110(a). Public Contract Code 7110(a) provides:

It is the policy of this state that anyone who enters into a contract with a state agency shall recognize the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code.

Contractor acknowledges that, to the best of its knowledge, it is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department.

#### **1.2 Priority Consideration to Employment of Qualified Aid Recipients.**

Pursuant to Public Contract Code 10353, Contractor must give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Chapter 2 (commencing with Section 11200) of Part 3 of the Welfare and Institutions Code, in accordance with Article 3.9 (commencing with Section 11349) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

#### **1.3 Nondiscrimination.**

Contractor shall comply with the provisions of the Fair Employment and Housing Act (Government Code 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations Tit. 2, Section 78250.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part thereof as if set forth in full.

#### **1.4 Public Records.**

Contractor acknowledges and agrees that all records, documents, drawings, plans, specifications and other materials in the Owner's possession, including materials submitted by Contractor, are subject to the provisions of the Public Records Act. Contractor shall be solely responsible for all determinations made by it under the Public Records Act, and for clearly and prominently marking each and every page or sheet of materials with "Trade Secret" or "Confidential" as it determines to be appropriate. Contractor is advised to contact legal counsel concerning the Public Records Act and its application to Contractor.



If any of the materials submitted by Contractor to the Owner are clearly and prominently labeled "Trade Secret" or "Confidential" by Contractor, the Owner will endeavor to advise Contractor of any request for the disclosure of such materials prior to making any such disclosure. Under no circumstances, however, will the Owner be responsible or liable to Contractor or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by Applicable Law, by court order or occurs through inadvertence, mistake or negligence on the part of the Owner.

In the event of litigation concerning the disclosure of any material submitted by Contractor to the Owner, the Owner's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court, and Contractor shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk.

### **1.5 Interest of Public Officials.**

No Owner board member, officer, employee, or agent shall have any direct or indirect interest in this Contract or its proceeds during, or within one year after, that person's tenure with the Owner. In addition, no Contractor-Related Entity shall enter into any contract involving services or property with a person or business prohibited by Government Code 1090 et seq. and 87100 et seq. from transacting such business. Unless an explicit statement to the contrary accompanied Contractor's Proposal, Contractor affirms that no board member, officer, or employee of the Owner has any interest (whether contractual, non-contractual, financial, or otherwise) in this transaction or in the business of Contractor. If any such interest becomes known to Contractor at any time, Contractor shall submit a full and complete written disclosure of such information to the Owner, even if such interest would not be considered a conflict under Government Code 1090 et seq. and 87100 et seq.

Neither Contractor nor any of its employees, agents and representatives shall offer or give to an officer, official or employee of the Owner any gifts, entertainment, payments, loans or gratuities. The Owner may, by written notice to Contractor, terminate Contractor's right to proceed under the Contract if it is found that gratuities (in the form of gifts, entertainment, or otherwise) were offered or given by Contractor, or any agent of Contractor, to any board member, officer, agent and/or employee of the Owner.

Employment by Contractor of personnel on the payroll of the Owner is not permitted in the performance of the Contract, even though such employment may be outside the Owner employee's regular working hours or on Saturdays, Sundays, holidays or vacation time; further, employment by Contractor of personnel who have been on the Owner's payroll within one year prior to the date of Contract award, where such employment is caused by and/or dependent upon Contractor securing the Contract or a related contract with the Owner, is also prohibited.

Contractor shall include the language of this provision in subcontracts for any first tier Subcontractor whose contract exceeds \$100,000.

The rights and remedies of the Owner specified in this clause are not exclusive and are in addition to any other rights and remedies allowed by Applicable Law.

### **1.6 Drug-Free Workplace Certification.**

Contractor certifies under penalty of perjury under the laws of the State of California that Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990



(Government Code 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code 8355(a).

b) Establish a Drug-Free Awareness Program as required by Government Code 8355(b) to inform employees about all of the following:

- i) the dangers of drug abuse in the workplace;
- ii) the person's or organization's policy of maintaining a drug-free workplace;
- iii) any available counseling, rehabilitation and employee assistance programs; and,
- iv) penalties that may be imposed upon employees for drug abuse violations.

c) Provide, as required by Government Code 8355(c), that every employee who works on the proposed or resulting Contract:

- i) will receive a copy of the company's drug-free policy statement; and,
- ii) will agree to abide by the terms of the company's statement as a condition of employment on the Contract.

### **1.7 Assignment of Anti-Trust Actions.**

Pursuant to Government Code 4552, 4553, and 4554, the following provisions are incorporated herein:

a) In submitting a bid to the State, Contractor offers and agrees that if the bid is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of Goods, material, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.

b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and



- i) the assignee has not been injured thereby, or
- ii) the assignee declines to file a court action for the cause of action.

### **1.8 Sweatfree Code of Conduct.**

Contractor declares under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the State pursuant to the Contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and Public Contract Code 6108.

### **1.9 Recycling.**

Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code 12200, in products, materials, Goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code 2209. With respect to printer or duplication cartridges that comply with the requirements of Public Contract Code 12156(e), the certification required by this subdivision shall specify that the cartridges so comply.

### **1.10 Electronic Waste Recycling Act of 2003.**

Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code 12200, in products, materials, Goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code 12209. With respect to printer or duplication cartridges that comply with the requirements of 12156(e), the certification required by this subdivision shall specify that the cartridges so comply.

### **1.11 Use Tax Collection.**

In accordance with Public Contract Code 10295.1, Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise State of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of Public Contract Code 10295.1.

### **1.12 Expatriate Corporations.**

Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code 10286 and 10286.1, and is eligible to Contract with the State.

### **1.13 Domestic Partners.**

Contractor certifies that it is in compliance with Public Contract Code 10295.3.



### **1.14 Loss Leader.**

It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (Public Contract Code 10302(b).)

## **ARTICLE 2 REQUIREMENTS UNDER FEDERAL LAW:**

Contractor understands that the Owner has received Federal funding from FRA for the Project and acknowledges that it is required to comply with all applicable federal laws, regulations, policies and related administrative practices, whether or not they are specifically referenced herein. Contractor acknowledges that federal laws, regulations, policies and related administrative practices may change and that such changed requirements will apply to the Project. Contractor shall ensure compliance by its Subcontractors and include appropriate flow down provisions in each of its lower-tier subcontracts as required by applicable federal laws, regulations, policies and related administrative practices, whether or not specifically referenced herein. Notwithstanding anything to the contrary contained in the Contract, all FRA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the Contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Owner requests, which would cause the Owner to be in violation of FRA requirements.

Contractor shall comply with and insert the following provisions in all subcontracts issued pursuant to this Contract:

### **2.1 Davis-Bacon and Copeland Anti-Kickback Acts.**

i. Contractor must pay prevailing wages on the Project, as required by 49 USC § 24405(c)(2). All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the U.S. Secretary of Labor under the Copeland Act (29 CFR. Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor provided in Attachment E of the Signature Document, regardless of any contractual relationship which may be alleged to exist between Contractor or Subcontractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by Contractor and its





Subcontractors at the Site in a prominent and accessible place where it can be easily seen by the workers.

ii. A. The Owner shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Owner shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- Except with respect to helpers as defined as 29 CFR. 5.2(n)(4), the Work to be performed by the classification requested is not performed by a classification in the wage determination; and
- The classification is utilized in the area by the construction industry; and
- The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- With respect to helpers as defined in 29 CFR. 5.2(n)(4), such a classification prevails in the area in which the Work is performed.

B. If Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Owner agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Owner to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Owner or will notify the Owner within the 30-day period that additional time is necessary.

C. In the event Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Owner do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Owner shall refer the questions, including the views of all interested parties and the recommendation of the Owner, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Owner or will notify the Owner within the 30-day period that additional time is necessary.

D. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (ii)(B) or (ii)(C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

iii. Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

iv. If Contractor does not make payments to a trustee or other third person, Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably





anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

v. A. The Owner shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Owner shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- The classification is utilized in the area by the construction industry; and
- The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

B. If Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Owner agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Owner to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Owner or will notify the Owner within the 30-day period that additional time is necessary.

C. In the event Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Owner do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Owner shall refer the questions, including the views of all interested parties and the recommendation of the Owner, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the Owner or will notify the Owner within the 30-day period that additional time is necessary.

D. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (v)(B) or (v)(C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

#### Withholding

The Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from Contractor under this Contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by



Contractor or any Subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Owner may, after written notice to Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

### Payrolls and Basic Records

i. Payrolls and basic records relating thereto shall be maintained by Contractor during the course of the Work and preserved for a period of six years thereafter for all laborers and mechanics working at the site of the Work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractor or Subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

ii. A. Contractor shall submit weekly for each week in which any Contract Work is performed a copy of all payrolls to the Owner for transmission to the Federal Railroad Administration (FRA). Contractor is also responsible for the submission of copies of payrolls by all Subcontractors.

The payrolls submitted shall set out accurately and completely all of the information required to be maintained under Section 5.5(a)(3)(i) of 29 CFR Part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402.

B. Each payroll submitted shall be accompanied by a Statement of Compliance signed by Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract, and shall certify the following:

- That the payroll for the payroll period contains the information required to be maintained under Section 5.5(a)(3)(i) of 29 CFR Part 5, and that such information is correct and complete
- That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly



- wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3
- That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract
- C. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (ii)(B) of this section.
- D. The falsification of any of the above certifications may subject Contractor or Subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.
- iii. Contractor or Subcontractor shall make the records required under paragraph (i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Railroad Administration (FRA), the Department of Labor (DOL), and the Owner, and shall permit such representatives to interview employees during working hours on the job. If Contractor or Subcontractor fails to submit the required records or to make them available, the federal agency may, after written notice to Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR § 5.12.

### Apprentices and Trainees

#### Apprentices

Apprentices will be permitted to work at less than the predetermined rate for the Work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's



hourly rate) specified in Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, Contractor shall no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

### Trainees

Except as provided in 29 CFR § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, Contractor shall no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

### Equal Employment Opportunity

The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

### Compliance with Copeland Act requirements

Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.



## **2.2 Safety.**

Pursuant to Section 107 of the Contract Work Hours and Safety Standards Act and Department of Labor Regulations at 29 CFR Part 1926, no laborer or mechanic working on this Contract shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to their health and safety as determined under applicable health standards promulgated by the Secretary of Labor.

## **2.3 Record Retention.**

During the course of its activities under this Contract and for three years thereafter, Contractor agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials (in hard copy and/or electronic format) relating to its performance under this contract as FRA may require. Reporting and record-keeping requirements are set forth in 49 CFR Part 18.

## **2.4 Audit and Inspection; Inspection by Federal Officials.**

Contractor agrees to permit the Owner, FRA, the Secretary of Transportation and Comptroller General of the United States, or their authorized representatives, to inspect, copy and/or audit all data and records (in hard copy and/or electronic format) pertaining to Contractor's activities under this Contract, including without limitation, all data and records relating to: (i) support for any proposal, change order, or request for equitable adjustment submitted to Owner by Contractor, (ii) Contractor compliance and performance, including any work or deliverables in progress, (iii) compliance with applicable provisions of Owner's federal grant, regulations and statutes, and (iv) support for all direct and indirect costs or prices charged to Owner. In connection with audit and inspection activities, Owner and FRA shall be afforded, upon request: (i) access to Contractor's facilities and to Contract work or deliverables in progress, (ii) the opportunity to interview Contractor's employees concerning any matter relating to the Contract, and (iii) adequate and appropriate workspace. Contractor agrees to reimburse Owner, within sixty (60) days after receipt of a written request, the full amount of any undisputed audit findings or questioned costs, unless otherwise agreed by Owner in the course of post-audit negotiations with Contractor. Nothing in the Contract shall be construed to limit the rights, obligations, authority, or responsibilities of Owner and FRA, including the right to seek information by subpoena.

## **2.5 Civil Rights.**

In accordance with Title VI of the Civil Rights Act, as amended; 42 USC § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended; 42 USC. § 6102, Section 202 of the Americans with Disabilities Act of 1990; 42 USC § 12132; and 49 USC § 306, Contractor agrees that it will not discriminate against any individual because of race, color, religion, national origin, sex, age or disability in any activities leading up to or in performance of the Contract. In addition, Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements that FRA may issue.

In accordance with Title VII of the Civil Rights Act, as amended, 42 USC § 2000e, Contractor agrees to comply with all applicable equal opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," including 41 CFR 60 et seq. (which implements Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order





No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the Project. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, or age. Such action shall include the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor agrees to comply with any implementing requirements FRA may issue.

In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC § 623, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FRA may issue.

In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 USC § 12112, Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, Contractor agrees to comply with any implementing requirements FRA may issue.

Contractor also agrees not to discriminate on the basis of drug abuse, in accordance with the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, alcohol abuse, in accordance with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, and to comply with Sections 523 and 527 of the Public Health Service Act of 1912 (42 USC §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records. In addition, Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements that FRA may issue.

## **2.6 False Claims Act.**

Contractor agrees that it shall promptly notify the State and shall refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, Subcontractor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal funds.

## **2.7 Buy America.**

Contractor shall comply with the Buy America Act (49 USC 24405(a)), and applicable FRA guidance.

## **2.8 Cargo Preference--Use of United States-Flag Vessels.**

As required by U.S. DOT, Maritime Administration regulations, "Cargo Preference -- U.S.-Flag Vessels," 46 CFR part 381, if equipment, materials or commodities may be transported by ocean vessel in carrying out the activities funded under this Contract, Contractor agrees:



a) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this contract to the extent such vessels are available at fair and reasonable rates.

b) To furnish within 20 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "On-Board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a) above to Amtrak (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, S.W., Washington, DC 20590, marked with appropriate identification.

## **2.9 Debarment and Suspension.**

No contract shall be entered into with parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension" and 49 CFR Part 29. This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549. Contractor will comply with U.S. DOT regulations, "Governmentwide Debarment and Suspension (Nonprocurement)." Contractor shall execute the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion" attached herein.

## **2.10 Participation by Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals.**

Contractor shall comply with 41 CFR Part 60, Best Practices of 49 CFR Part 26, Executive Order 11246 and Title VI of the Civil Rights Act of 1964 and related statutes. Contractor must comply with the Owner's Small and Disadvantaged Business Enterprise Program. For more detailed information regarding the Owner's Small and Disadvantaged Business Enterprise Program requirements, including SB utilization reporting, substitution/termination processes, Recognized SB Roster of Certifying Agencies and other performance related factors, refer to the Owner's Small and Disadvantaged Business Enterprise Program.

## **2.11 Reprints of Publications.**

Whenever an employee of a Contractor or a Contractor-Related Entity writes an article regarding the Project or otherwise resulting from work under this Contract that is published in a scientific, technical, or professional journal or publication, Contractor shall ensure that the Owner is sent two reprints of the publication, clearly referenced with the appropriate identifying information.

## **2.12 Compliance with Americans With Disabilities Act.**

Contractor will comply and cause its subcontractors and lower tier subcontractors to comply with the requirements of the Americans with Disabilities Act of 1990, as amended (42 USC § 12101 et seq.), the Rehabilitation Act of 1973, as amended (29 USC 794 et seq.) and implementing Department of Transportation regulations at 49 CFR parts 27, 37 and 38.





**2.13 Environmental Protection.**

Contractor will conduct work under this Contract, and will require that work that is conducted as a result of this Contract be in compliance with the following provisions, as modified from time to time, all of which are incorporated herein by reference: the Clean Air Act, 42 USC 7401 et seq., and the Federal Water Pollution Control Act, 33 USC 1251 et seq., and all regulations issued thereunder. Contractor certifies that no facilities that will be used to perform work under this Contract are listed on the List of Violating Facilities maintained by the Environmental Protection Agency (EPA). Contractor will notify Owner as soon as it or any subcontractor receives any communication from the EPA indicating that any facility which will be used to perform work pursuant to this Contract is under consideration to be listed on the EPA's List of Violating Facilities; provided, however, that Contractor's duty of notification hereunder shall extend only to those communications of which it is aware, or should reasonable have been aware. Also, where applicable, Contractor shall comply with the Wild and Scenic Rivers Act of 1968 (16 USC 1271 et seq.).

**2.14 Byrd Anti-Lobbying Amendment.**

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying", a copy of which is attached hereto. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 USC 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to Amtrak.

**2.15 Drug-Free Work Place.**

Contractor agrees to comply with U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Grants)", 49 CFR part 29.

**2.16 Federal On-the-Job Training Participation Goal.**

Contractor will require that Work that is conducted under this Contract be in compliance with Federal On-the-Job (OJT) Training Participation Provisions as set forth in 41 C.F.R. Part 60 § 1-999 and Exec. Order No. 11246, unless otherwise noted.

